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10 PENNSYLVANIA LIFE INSURANCE COMPANY

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 ALBERT POSTEL

14 Plaintiff,

15 v.

16 PENNSYLVANIA LIFE  
17 INSURANCE COMPANY;  
18 and DOES 1 through 10,  
19 inclusive.

20 Defendants.

Case No. 2:19-cv-00421 ODW (ASx)

**PROTECTIVE ORDER**

1  
2 1. A. PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,  
4 proprietary, or private information for which special protection from public  
5 disclosure and from use for any purpose other than prosecuting this litigation may  
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
7 enter the following Stipulated Protective Order. The parties acknowledge that this  
8 Order does not confer blanket protections on all disclosures or responses to  
9 discovery and that the protection it affords from public disclosure and use extends  
10 only to the limited information or items that are entitled to confidential treatment  
11 under the applicable legal principles. The parties further acknowledge, as set forth  
12 in Section 12.3, below, that this Stipulated Protective Order does not entitle them  
13 to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
14 procedures that must be followed and the standards that will be applied when a  
15 party seeks permission from the court to file material under seal.

16  
17 B. GOOD CAUSE STATEMENT

18 This action is likely to involve financial, fiduciary, and other sensitive  
19 proprietary information for which special protection from public disclosure and  
20 from use for any purpose other than prosecution of this action is warranted. Such  
21 confidential and proprietary materials and information consist of, among other  
22 things, confidential business or financial information pertaining to the Defendant,  
23 information regarding confidential business practices, or other confidential  
24 research, development, or commercial information (including information  
25 implicating privacy rights of Plaintiff and/or third parties), confidential entity  
26 ownership information, information otherwise generally unavailable to the public,  
27 or which may be privileged or otherwise protected from disclosure under state or

1 federal statutes, court rules, case decisions, or common law. Accordingly, to  
2 expedite the flow of information, to facilitate the prompt resolution of disputes  
3 over confidentiality of discovery materials, to adequately protect information the  
4 parties are entitled to keep confidential, to ensure that the parties are permitted  
5 reasonable necessary uses of such material in preparation for and in the conduct of  
6 trial, to address their handling at the end of the litigation, and serve the ends of  
7 justice, a protective order for such information is justified in this matter. It is the  
8 intent of the parties that information will not be designated as confidential for  
9 tactical reasons and that nothing be so designated without a good faith belief that it  
10 has been maintained in a confidential, non-public manner, and there is good cause  
11 why it should not be part of the public record of this case.

## 12 13 2. DEFINITIONS

14 2.1. Action: *Albert Postel v. Pennsylvania Life Insurance Company*, U.S.  
15 District Court for the Central District of California, Case No. 2:19-cv-00421 ODW  
16 (ASx).

17 2.2. Challenging Party: a Party or Non-Party that challenges the  
18 designation of information or items under this Order.

19 2.3. “CONFIDENTIAL” Information or Items: information (regardless of  
20 how it is generated, stored or maintained) or tangible things that qualify for  
21 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
22 the Good Cause Statement.

23 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as  
24 their support staff).

25 2.5. Designating Party: a Party or Non-Party that designates information or  
26 items that it produces in disclosures or in responses to discovery as  
27 “CONFIDENTIAL.”

1           2.6. Disclosure or Discovery Material: all items or information, regardless  
2 of the medium or manner in which it is generated, stored, or maintained (including,  
3 among other things, testimony, transcripts, and tangible things), that are produced  
4 or generated in disclosures or responses to discovery in this matter.

5           2.7. Expert: a person with specialized knowledge or experience in a matter  
6 pertinent to the litigation who has been retained by a Party or its counsel to serve  
7 as an expert witness or as a consultant in this Action.

8           2.8. House Counsel: attorneys who are employees of a party to this Action.  
9 House Counsel does not include Outside Counsel of Record or any other outside  
10 counsel.

11           2.9. Non-Party: any natural person, partnership, corporation, association,  
12 or other legal entity not named as a Party to this action.

13           2.10. Outside Counsel of Record: attorneys who are not employees of a  
14 party to this Action but are retained to represent or advise a party to this Action  
15 and have appeared in this Action on behalf of that party or are affiliated with a law  
16 firm which has appeared on behalf of that party, and includes support staff.

17           2.11. Party: any party to this Action, including all of its officers, directors,  
18 employees, consultants, retained experts, and Outside Counsel of Record (and their  
19 support staffs).

20           2.12. Producing Party: a Party or Non-Party that produces Disclosure or  
21 Discovery Material in this Action.

22           2.13. Professional Vendors: persons or entities that provide litigation  
23 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
25 and their employees and subcontractors.

26           2.14. Protected Material: any Disclosure or Discovery Material that is  
27 designated as "CONFIDENTIAL."

1           2.15. Receiving Party: a Party that receives Disclosure or Discovery  
2 Material from a Producing Party.

3  
4       3.     SCOPE

5           The protections conferred by this Stipulation and Order cover not only  
6 Protected Material (as defined above), but also (1) any information copied or  
7 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
8 compilations of Protected Material; and (3) any testimony, conversations, or  
9 presentations by Parties or their Counsel that might reveal Protected Material.

10          Any use of Protected Material at trial shall be governed by the orders of the  
11 trial judge. This Order does not govern the use of Protected Material at trial.

12  
13       4.     DURATION

14          Even after final disposition of this litigation, the confidentiality obligations  
15 imposed by this Order shall remain in effect until a Designating Party agrees  
16 otherwise in writing or a court order otherwise directs. Final disposition shall be  
17 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
18 with or without prejudice; and (2) final judgment herein after the completion and  
19 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
20 including the time limits for filing any motions or applications for extension of  
21 time pursuant to applicable law.

22  
23       5.     DESIGNATING PROTECTED MATERIAL

24          5.1.   Exercise of Restraint and Care in Designating Material for Protection.  
25 Each Party or Non-Party that designates information or items for protection under  
26 this Order must take care to limit any such designation to specific material that  
27 qualifies under the appropriate standards. The Designating Party must designate for

1 protection only those parts of material, documents, items, or oral or written  
2 communications that qualify so that other portions of the material, documents,  
3 items, or communications for which protection is not warranted are not swept  
4 unjustifiably within the ambit of this Order.

5  
6 Mass, indiscriminate, or routinized designations are prohibited. Designations  
7 that are shown to be clearly unjustified or that have been made for an improper  
8 purpose (e.g., to unnecessarily encumber the case development process or to  
9 impose unnecessary expenses and burdens on other parties) may expose the  
10 Designating Party to sanctions.

11  
12 If it comes to a Designating Party's attention that information or items that it  
13 designated for protection do not qualify for protection, that Designating Party must  
14 promptly notify all other Parties that it is withdrawing the inapplicable designation.

15  
16 5.2. Manner and Timing of Designations. Except as otherwise provided in  
17 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
18 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
19 under this Order must be clearly so designated before the material is disclosed or  
20 produced.

21  
22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic  
24 documents, but excluding transcripts of depositions or other pretrial or trial  
25 proceedings), that the Producing Party affix at a minimum, the legend  
26 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
27 contains protected material. If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the  
2 protected portion(s) (e.g., by making appropriate markings in the margins).

3  
4 A Party or Non-Party that makes original documents available for inspection  
5 need not designate them for protection until after the inspecting Party has indicated  
6 which documents it would like copied and produced. During the inspection and  
7 before the designation, all of the material made available for inspection shall be  
8 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
9 documents it wants copied and produced, the Producing Party must determine  
10 which documents, or portions thereof, qualify for protection under this Order.  
11 Then, before producing the specified documents, the Producing Party must affix  
12 the “CONFIDENTIAL legend” to each page that contains Protected Material. If  
13 only a portion or portions of the material on a page qualifies for protection, the  
14 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
15 appropriate markings in the margins).

16 (b) for testimony given in depositions that the Designating Party  
17 identify the Disclosure or Discovery Material on the record, before the close of the  
18 deposition all protected testimony.

19 (c) for information produced in some form other than documentary  
20 and for any other tangible items, that the Producing Party affix in a prominent  
21 place on the exterior of the container or containers in which the information is  
22 stored the legend “CONFIDENTIAL.” If only a portion or portions of the  
23 information warrants protection, the Producing Party, to the extent practicable,  
24 shall identify the protected portion(s).

25  
26 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent  
27 failure to designate qualified information or items does not, standing alone, waive

the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 *et seq.*

6.3. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL



DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses,

1 in the Action to whom disclosure is reasonably necessary provided: (1) the  
2 deposing party requests that the witness sign the form attached as Exhibit A hereto;  
3 and (2) they will not be permitted to keep any confidential information unless they  
4 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
5 otherwise agreed by the Designating Party or ordered by the court. Pages of  
6 transcribed deposition testimony or exhibits to depositions that reveal Protected  
7 Material may be separately bound by the court reporter and may not be disclosed  
8 to anyone except as permitted under this Stipulated Protective Order; and  
9 (i) any mediator or settlement officer, and their supporting  
10 personnel, mutually agreed upon by any of the parties engaged in settlement  
11 discussions.

12  
13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
14 IN OTHER LITIGATION

15 If a Party is served with a subpoena or a court order issued in other litigation  
16 that compels disclosure of any information or items designated in this Action as  
17 “CONFIDENTIAL,” that Party must:

- 18 (a) promptly notify in writing the Designating Party. Such  
19 notification shall include a copy of the subpoena or court order;
- 20 (b) promptly notify in writing the party who caused the subpoena  
21 or order to issue in the other litigation that some or all of the material covered by  
22 the subpoena or order is subject to this Protective Order. Such notification shall  
23 include a copy of this Stipulated Protective Order; and
- 24 (c) cooperate with respect to all reasonable procedures sought to be  
25 pursued by the Designating Party whose Protected Material may be affected.

26 If the Designating Party timely seeks a protective order, the Party served  
27 with the subpoena or court order shall not produce any information designated in

1 this action as “CONFIDENTIAL” before a determination by the court from which  
2 the subpoena or order issued, unless the Party has obtained the Designating Party’s  
3 permission. The Designating Party shall bear the burden and expense of seeking  
4 protection in that court of its confidential material and nothing in these provisions  
5 should be construed as authorizing or encouraging a Receiving Party in this Action  
6 to disobey a lawful directive from another court.

7  
8 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
9 PRODUCED IN THIS LITIGATION

10 (a) The terms of this Order are applicable to information produced  
11 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such  
12 information produced by Non-Parties in connection with this litigation is protected  
13 by the remedies and relief provided by this Order. Nothing in these provisions  
14 should be construed as prohibiting a Non-Party from seeking additional  
15 protections.

16 (b) In the event that a Party is required, by a valid discovery  
17 request, to produce a Non-Party’s confidential information in its possession, and  
18 the Party is subject to an agreement with the Non-Party not to produce the Non-  
19 Party’s confidential information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the  
21 Non-Party that some or all of the information requested is subject to a  
22 confidentiality agreement with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the  
24 Stipulated Protective Order in this Action, the relevant discovery request(s), and a  
25 reasonably specific description of the information requested; and

26 (3) make the information requested available for inspection  
27 by the Non-Party, if requested.

1 (c) If the Non-Party fails to seek a protective order from this court  
2 within 14 days of receiving the notice and accompanying information, the  
3 Receiving Party may produce the Non-Party's confidential information responsive  
4 to the discovery request. If the Non-Party timely seeks a protective order, the  
5 Receiving Party shall not produce any information in its possession or control that  
6 is subject to the confidentiality agreement with the Non-Party before a  
7 determination by the court. Absent a court order to the contrary, the Non-Party  
8 shall bear the burden and expense of seeking protection in this court of its  
9 Protected Material.

10  
11 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a Receiving Party learns that, by inadvertence or otherwise, it has  
13 disclosed Protected Material to any person or in any circumstance not authorized  
14 under this Stipulated Protective Order, the Receiving Party must immediately  
15 (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use  
16 its best efforts to retrieve all unauthorized copies of the Protected Material,  
17 (c) inform the person or persons to whom unauthorized disclosures were made of  
18 all the terms of this Order, and (d) request such person or persons to execute the  
19 "Acknowledgment and Agreement to Be Bound" that is attached hereto as  
20 Exhibit A.

21  
22 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
23 PROTECTED MATERIAL

24 When a Producing Party gives notice to Receiving Parties that certain  
25 inadvertently produced material is subject to a claim of privilege or other  
26 protection, the obligations of the Receiving Parties are those set forth in Federal  
27 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify

1 whatever procedure may be established in an e-discovery order that provides for  
2 production without prior privilege review. Pursuant to Federal Rule of  
3 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of  
4 disclosure of a communication or information covered by the attorney-client  
5 privilege or work product protection, the parties may incorporate their agreement  
6 in the stipulated protective order submitted to the court.

7  
8 12. MISCELLANEOUS

9 12.1. Right to Further Relief. Nothing in this Order abridges the right of any  
10 person to seek its modification by the Court in the future.

11 12.2. Right to Assert Other Objections. By stipulating to the entry of this  
12 Protective Order no Party waives any right it otherwise would have to object to  
13 disclosing or producing any information or item on any ground not addressed in  
14 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
15 any ground to use in evidence of any of the material covered by this Protective  
16 Order.

17 12.3. Filing Protected Material. A Party that seeks to file under seal any  
18 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
19 may only be filed under seal pursuant to a court order authorizing the sealing of the  
20 specific Protected Material at issue. If a Party's request to file Protected Material  
21 under seal is denied by the court, then the Receiving Party may file the information  
22 in the public record unless otherwise instructed by the court.

23  
24 13. FINAL DISPOSITION

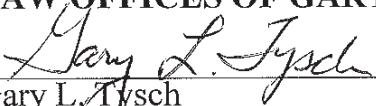
25 After the final disposition of this Action, as defined in paragraph 4, within  
26 60 days of a written request by the Designating Party, each Receiving Party must  
27 return all Protected Material to the Producing Party or destroy such material. As

1 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
2 compilations, summaries, and any other format reproducing or capturing any of the  
3 Protected Material. Whether the Protected Material is returned or destroyed, the  
4 Receiving Party must submit a written certification to the Producing Party (and, if  
5 not the same person or entity, to the Designating Party) by the 60 day deadline that  
6 (1) identifies (by category, where appropriate) all the Protected Material that was  
7 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
8 copies, abstracts, compilations, summaries or any other format reproducing or  
9 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
10 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
11 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
12 and trial exhibits, expert reports, attorney work product, and consultant and expert  
13 work product, even if such materials contain Protected Material. Any such archival  
14 copies that contain or constitute Protected Material remain subject to this  
15 Protective Order as set forth in Section 4 (DURATION), and the Court will retain  
16 jurisdiction to enforce the terms of this Order after termination of this Action.

17  
18 14. Any violation of this Order may be punished by any and all appropriate  
19 measures including, without limitation, contempt proceedings and/or monetary  
20 sanctions.

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22  
23  
24 Dated: April 23, 2019

25 **LAW OFFICES OF GARY L. TYSCH**  
26 By:   
27 Gary L. Tysch  
Attorneys for Plaintiff  
ALBERT POSTEL

1 **WINGET SPADAFORA &**  
2 **SCHWARTZBERG LLP**

3 Dated: April 23, 2019

4 By: s/Richard P. Tricker

5 Richard P. Tricker  
6 Christina M. Vier

7 Attorneys for Defendant  
8 PENNSYLVANIA LIFE INSURANCE  
9 COMPANY

10 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

11 DATED: April 30, 2019

12 / s /

13 The Honorable Alka Sagar  
14 United States Magistrate Judge  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *Albert Postel v. Pennsylvania Life Insurance Company*, U.S. District Court for the Central District of California, Case No. 2:19-cv-00421 ODW (ASx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_